

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARCUS UPSHAW,)
Petitioner,) Civil Action No. 2: 18-cv-1578
v.) United States District Judge
ERIC TICE, Superintendent; DISTRICT)
ATTORNEY OF ALLEGHENY COUNTY,)
and ATTORNEY GENERAL OF THE)
STATE OF PENNSYLVANIA,)
Respondents.)

MEMORANDUM OPINION

Pending before the Court is the Petition for Writ of Habeas Corpus filed by Petitioner Marcus Upshaw (ECF No. 3) and the Report and Recommendation of Chief United States Magistrate Judge Cynthia Reed Eddy recommending that the Petition for Writ of Habeas Corpus be dismissed as time barred and that no certificate of appealability be issued. (ECF No. 16). Petitioner was served with the Report and Recommendation at his listed address and was advised that he had until May 28, 2019, to file written objections to the Report and Recommendation. To date, Petitioner has not filed any objections nor has he sought an extension of time in which to do so.¹

The Court has reviewed the matter and concludes that the Report and Recommendation

¹ If a party does not file timely objections to a magistrate judge's report and recommendation, the party may lose its right to *de novo* review by the district court, although the court must still give "reasoned consideration" to the magistrate judge's report before adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878-79 (3d Cir. 1987). The district court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed.R.Civ.P. 72(b), advisory committee notes.

correctly analyzes the issues and makes a sound recommendation. Petitioner may not have understood the implications of waiting so long to file his federal habeas corpus petition, but it is well established that a petitioner’s “lack of legal knowledge or legal training does not alone justify equitable tolling.” *Ross v. Varano*, 712 F.3d 784, 800 (3d Cir. 2013) (citing *Brown v. Shannon*, 322 F.3d 768, 774 (3d Cir. 2003) and *Doe v. Menefee*, 391 F.3d 147, 177 (2d Cir. 2004)). Accordingly, after *de novo* review of the petition and documents in the case, together with the Report and Recommendation, the Petition for Writ of Habeas Corpus will be **DISMISSED** as untimely.

An appropriate Order follows.

BY THE COURT:

s/Nora Barry Fischer
Nora Barry Fischer
United States District Judge

Dated: June 6th, 2019

cc: MARCUS UPSHAW
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